

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

GUY ALLEN MILLNER, JR.,

Petitioner(s),

v.

UNITED STATES,

Respondent.

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No. 4:16CV01003 ERW

MEMORANDUM AND ORDER

This matter comes before the Court on Government’s Motion to Dismiss Movant’s § 2255 Motion as Moot [ECF No. 8].

Petitioner Gary Allen Millner, Jr. (“Petitioner”) filed a motion pursuant to 28 U.S.C. § 2255 to vacate his sentence based on the Supreme Court’s ruling in *Johnson v. United States*, 135 S. Ct. 2251 (2015). The Government moves to dismiss Petitioner’s motion as moot because Petitioner was released from prison to a Residential Reentry Center.

Petitioner has not been released from custody. While in a Residential Reentry Center, Petitioner still is under the custody of the Bureau of Prisons. Therefore, his petition is not moot and there remains a live controversy.

Accordingly,

IT IS HEREBY ORDERED that the Government's Motion to Dismiss Movant's § 2255 Motion as Moot [ECF No. 8] is **DENIED**.

IT IS FURTHER ORDERED that the stay in this matter be lifted.

IT IS FURTHER ORDERED that the Government shall file a response to Petitioner's Motion to Vacate and Supplemental Memorandums within fourteen days of this order.

Dated this 2nd Day of May, 2017.

A handwritten signature in black ink, appearing to read "E. Richard Webber", written in a cursive style.

E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE